HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.2683 of 2001

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

PETITIONER : Syed Ashfaque Hashimi, Son of S.I. Ali Hashmi, Silicate Factory Marg, Ravishankar Shukla Ward, Rajatalab, Raipur-492001

Versus

Respondents :
1. State of Chhattisgarh, through Chief Secretary, Minority Welfare Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Mohd. Yakub Rajwani (Sunni) Ex-M.L.A., Mahasamund (C.G.)
3. Imran Memon, Ex-M.L.A. (Sunni) Khujji, Rajnandgaon (C.G.)
4. Badruddin Kureshi (Sunni) Present M.L.A., Bhilai, Durg (C.G.)
5. Mohd. Akbar (Sunni), Present M.L.A., Virendra Nagar, Kawardha (Chhattisgarh)
6. Hazi Mohd. Sahi (Bohra, Advocate Raipur (Chhattisgarh)
7. Zahir Mohammed (Sunni), Advocate, Durg (Chhattisgarh)
8. Hazi Mohammed Salim Asharfi (sunni) Mutawalli, Modhapara Maszid, Raipur (C.G.)
9. Sirajuddin Qureshi (Sunni) Retd. Accounts Officer, Raipur.
10. Maulana Akbar Ali Farooqi (Sunni), Yatimkhana, Raipur (Chhattisgarh)
11. Hafiz Mohammed (Sunni), Bilaspur (Chhattisgarh)

Shri H.B.Agrawal, Sr. Counsel with Shri Pakaj Agrawal, for the petitioner.

Shri Prashant Mishra, Addl. Advocate General with Shri P.S.Koshy, Dy. Advocate General for the State of Chhattisgarh/respondent No.1

Shri Bharatlal Dembra, for respondents 2, 6 and 7.

Shri Shailendra Shukla, Advocate with Shri Deepak Pandey. for respondent 4.

Shri S.K.Beriwal, Advocate with Shri Ratan Pushty, Counsel for respondents No.8 & 9.

None for other respondents.

ORAL ORDER

(Passed on 10th January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

1. The petitioner is General Secretary of Chhattisgarh Markazi Mutawalli Council, Raipur. He, claiming to have genuine great concern for welfare of Society in general and for welfare of Muslim community in particular, has filed this writ petition under Article 226 of the Constitution of India questioning the validity and legality of the notification issued by the first respondent herein, Government of Chhattisgarh, dated 11.12.2001 constituting the Wakf Board for the State of Chhattisgarh in exercise of its power under Section 13 of the Wakf Act, 1995 (for short, 'the Act). In the writ petition, the validity of the constitution of the Chhattisgarh Wakf Board is assailed by urging the following grounds:

(A) The respondent no.1 has not nominated government officials as member, therefore, Chhattisgarh Wakf Board is illegal.

(B) The Shia Musalman has not been included in board though having wakf property in Chhattisgarh, Chhattisgarh Wakf Board is illegal.

(C) Respondent no.4 and 5 are ministers having office of the fruit, cannot be included as members of Chhattisgarh Wakf Board, hence illegal.

(D) Respondent no.6 and 7 cannot be said to a member of Chhattisgarh State Bar Council because Chhattisgarh State Bar Council has yet to be formed, therefore, their nominations are illegal and further in M.P. Wakf

Board there are two members of M.P.State Bar Council are existing and yet working. The respondent no.6 & 7 are members of M.P.State Bar Council, cannot be included in board.

(E) Respondent no.8 is Mutawalli already, therefore he could have not been included and nominated in board because two mutawalli have yet to be elected.

(F) Respondent no.9 and 10 have been wrongly nominated because respondent no.9 is brother of respondent no.4, who is minister of Minority welfare Department and has no connection with any social welfare of the organization. Respondent no.10 runs Yatimkhana and gets remuneration for his services rendered to it, therefore his appointment and nomination is illegal.

(G) That the notification is in accordance with section 14(9) of the Wakf Act 1995, hence illegal.

(H) That the notification is in violation of section 14(1) to (8) of Wakf Act 1995, hence illegal.

(I) That the successor state i.e. State of Chhattisgarh has never intended to discontinue or bifurcate M.P.Wakf Board which is existing for both the states, which has been legally formed, according to section 74(1)(i) of the M.P.Reorganisation Act 2000, the whole process of formation of Chhattisgarh Wakf Board is illegal and liable to be set aside.

2. This Court while entertaining the writ petition on 26.12.2001, stayed the operation of the notification dated 11.12.2001. That ad-interim stay was subsequently vacated at the instance of the State Government by this Court vide order dated 13.07.2005. In the interregnum, the State Government removed the deficiencies/mistakes pointed out by the petitioner in his writ petition. From the perusal of the docket order dated 8.7.2003, we could find that this fact was brought to the notice of the Court by the learned Addl. Advocate General for the State and this Court has

observed that if the defects are removed in the constitution of the State Wakf Board, the said fact could be brought to the notice of the Court at the next date of hearing. After this event, the interim stay was vacated by this Court on 13.7.2005. As could be seen from that order also, learned Addl. Advocate General submitted that the defects have been cured in the constitution of the Chhattisgarh State Wakf Board.

3. Be that as it may, having heard learned counsel for the parties, we do not find any substance in any of the grounds urged in paragraph 6 of the writ petition either for the reason that the defects have been subsequently removed or for the reason that the grounds are misconceived and untenable in terms of law. We are satisfied that as on today there is absolutely no ground for us to conclude that the constitution of the Chhattisgarh State Wakf Board suffers from any illegality and irregularity. Although we heard Shri H.B.Agrawal, learned senior counsel for the petitioner for considerable time, he was not in a position to make out any ground on the basis of which we could possibly condemn the constitution of the Wakf Board by the State Government, as it exists today.

4. In the result and for the foregoing reasons, we dismiss the writ petition, however, with no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani